

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

IN RE RYAN Y. )  
) 2 CA-JV 2011-0063  
) DEPARTMENT B  
)  
) MEMORANDUM DECISION  
) Not for Publication  
) Rule 28, Rules of Civil  
) Appellate Procedure  
)  
)  
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 14826702

Honorable Kathleen A. Quigley, Judge Pro Tempore

AFFIRMED

Curtis & Cunningham  
By George Haskel Curtis

Tucson  
Attorneys for Appellant

Barbara LaWall, Pima County Attorney  
By Dale Cardy

Tucson  
Attorneys for Appellee

V Á S Q U E Z, Presiding Judge.

¶1 After appellant Ryan Y. admitted he had committed sexual conduct with a minor in violation of A.R.S. § 13-1405, he was adjudicated delinquent and placed on juvenile intensive probation. The juvenile court revoked probation a few months later and committed Ryan to the Arizona Department of Juvenile Corrections (ADJC), subsequently ordering him to register as a sex offender pursuant to A.R.S. § 13-3821(D). Ryan challenges the registration order and the court’s denial of his motion to “dismiss” or stay that order pending this appeal, arguing § 13-3821(D) is unconstitutionally vague and “permits arbitrary and discriminatory enforcement.” He also asserts the order was entered in violation of his double jeopardy rights and the Fifth Amendment. We affirm for the reasons stated below.

¶2 We will not disturb a juvenile court’s disposition order, including the requirement that the juvenile register as a sex offender, absent an abuse of discretion. *See In re Nickolas T.*, 223 Ariz. 403, ¶ 10, 224 P.3d 219, 222 (App. 2010). Applying to adult prosecutions, subsection (A) provides that persons convicted of certain specified offenses must register and subsection (C) permits the court to require persons convicted of certain other specified offenses to register. Subsection (D) relates to juvenile offenders and provides that “[t]he court may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section.” The duty to register imposed on a juvenile offender pursuant to § 13-3821(D) “terminate[s] when the person reaches twenty-five years of age.” § 13-3821(D), (F).

¶3 Ryan contends the statute is “void for vagueness pursuant to the Due Process Clause of the Fifth Amendment . . . as well as Art. 2 §4 of the Arizona Constitution.” He argues § 13-3821(D) does not specify the factors a court may consider

in deciding whether to require a juvenile to register and does not restrict the conduct the court may consider to that which gave rise to the delinquency adjudication. He argues this could result in the “imposition of a harsher sentence” based on subsequent acts and amount to double punishment, in violation of his double jeopardy rights.

¶4 At the outset, Ryan did not raise any of the arguments he raises on appeal until after the juvenile court ordered him to register as a sex offender on May 20, 2011, two days before his eighteenth birthday. In his motion to dismiss or stay the registration order, he argued for the first time that his double jeopardy rights under the federal and state constitutions were violated and that § 13-3821 is unconstitutionally vague because it does not specify the criteria courts may consider in determining whether a juvenile must register. At the June 2011 hearing on the motion, Ryan argued the statute was vague “as it is applied” to him, but conceded he had not objected to the “procedure” the court had followed, which was to defer the registration issue until after Ryan had an opportunity to participate in a program for sex offenders through the ADJC.<sup>1</sup> His counsel argued, “the

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<sup>1</sup>We have an independent duty to determine our jurisdiction, *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997), and in doing so, we have considered whether the juvenile court had jurisdiction to defer or suspend the imposition of the registration order once it revoked probation and committed him in August 2010. The juvenile court has discretion to determine whether a juvenile should be required to register as a sex offender and also to delay this determination based on the circumstances of the individual case. *Nickolas T.*, 223 Ariz. 403, ¶ 10, 224 P.3d at 222. But the juvenile in *Nickolas T.* was ordered to register and was placed on probation in the same final disposition order. *Id.* ¶ 2. The court in that case had granted the juvenile’s motion to terminate the previously imposed order well after the minor had successfully completed his probation. *Id.* ¶ 3. Nevertheless, any jurisdictional defect could only have arguably arisen had Ryan attempted to appeal from the August disposition order. Assuming, without deciding, the court could not bifurcate the issue of registration from the rest of the case, the court arguably kept the 2010 disposition order from becoming a final, appealable order by deferring the registration issue, which, at least in the restitution context, our supreme court has discouraged. *See In re Alton D.*, 196 Ariz. 195, ¶ 9, 994 P.2d 402, 404 (2000); *see also In re Eric L.*, 189 Ariz. 482, 484, 943 P.2d 842, 844 (App.

question is, whether the minor could waive his double jeopardy rights and secondly, whether or not he was properly informed that he had those double jeopardy rights . . . .” Although counsel attempted to preserve the due process and double jeopardy issues, Ryan had not given the juvenile court the opportunity to address them until after the court had delayed the issue of registration for almost a year so that Ryan had the opportunity to rehabilitate with the assistance of treatment while in ADJC. By repeatedly failing to raise these issues until after the court had ordered him to register, thus depriving the court of a meaningful opportunity to address them, Ryan waived these arguments. *See In re Kyle M.*, 200 Ariz. 447, ¶ 25, 27 P.3d 804, 809 (App. 2001) (declining to address argument that statute was unconstitutionally vague and overbroad because juvenile failed to raise argument in juvenile court); *see also Kimu P. v. Ariz. Dep't of Econ. Sec.*, 218 Ariz. 39, n.3, 178 P.3d 511, 516 n.3 (App. 2008).

¶5 In any event, Ryan is not entitled to relief. A person who has “endured a threatened or actual injury because of the alleged vagueness of a statute . . . has standing to attack the constitutional validity of the statute upon that basis.” *State v. McDermott*, 208 Ariz. 332, ¶ 11, 93 P.3d 532, 535 (App. 2004). Conversely, a person “whose conduct is clearly proscribed by the core of the statute has no standing to attack the statute [for vagueness].” *State v. McLamb*, 188 Ariz. 1, 6, 932 P.2d 266, 271 (App. 1996). Ryan cannot now complain the statute is unconstitutional as to him because, as

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1997) (delinquency disposition order “necessarily interlocutory in nature when restitution remains an unresolved issue”). Orally pronounced on May 20, 2011, two days before Ryan’s eighteenth birthday, the registration order was the final order. Additionally, the juvenile court clearly has ongoing jurisdiction to terminate a previously imposed duty to register, *see* § 13-3821(G), if the juvenile has matured or has been rehabilitated, “is no longer a danger to society,” and “the justification for such an obligation no longer exists.” *Nickolas T.*, 223 Ariz. 403, ¶ 11, 224 P.3d at 222. We conclude the juvenile court had jurisdiction to decide this matter, and so, too, do we.

discussed below, he repeatedly agreed with the procedure the court followed and was well aware of what the court would consider in deciding whether to require him to register. *Cf. State v. McMahon*, 201 Ariz. 548, ¶ 6, 38 P.3d 1213, 1215 (App. 2002) (“Ordinarily, a defendant may not challenge a statute as being impermissibly vague or overbroad where the statute has given him fair notice of the criminality of his own conduct, even though the statute may be unconstitutional when applied to someone else.”).

¶6 As we also discuss below, the factors the juvenile court considered were neither erroneous, given the purpose and the language of § 13-3821, nor did they constitute an abuse of discretion. The purpose of sex-offender registration under §13-3821(D) is “to facilitate the location of sex offenders.” *In re Maricopa Cnty. Juv. Action No. JV-132744*, 188 Ariz. 180, 183, 933 P.2d 1248, 1251 (App. 1996). The statute is primarily a regulatory provision, and is designed to “facilitat[e] the location of child sex offenders by law enforcement.” *State v. Noble*, 171 Ariz. 171, 178, 829 P.2d 1217, 1224 (1992); *see also Maricopa Cnty. No. JV-132744*, 188 Ariz. at 183, 933 P.2d at 1251 (relying on *Noble* and concluding “the overriding purpose of the statute is to facilitate the location of offenders and that purpose is unrelated to punishing the offender for past crimes”). Based on its purpose and language, the statute gives the juvenile court discretion to determine whether a juvenile should be required to register as a sex offender and also to delay this determination based on the circumstances of the individual case. *See Nickolas T.*, 223 Ariz. at 406, ¶ 10, 224 P.3d at 222. The primary consideration under the statute is whether the juvenile is “a danger to society.” *Id.* ¶ 11. Factors to consider include, therefore, the need to protect the public and, consequently, conduct reflecting the likelihood the person will commit another offense, and the “potentially

substantial effect the requirement would have on [the person's] life.” *State v. Davis*, 226 Ariz. 97, ¶ 23, 244 P.3d 101, 107 (App. 2010).

¶7 Ryan repeatedly permitted the juvenile court to defer the issue of registration and the record establishes he knew the court would consider his behavior while at ADJC among other factors. Ryan knew at the time he entered the plea in May 2010 that a psychosexual evaluation would be conducted and that the court would consider it when determining the appropriate disposition. And, at the time of the June 2010 disposition, Ryan was well aware he could be required to register as a sex offender. He was placed on probation and the parties expressly agreed the court could defer the issue of registration. The prosecutor explained that the Pima County Attorney’s Office would “[t]ypically,” defer the issue “if defense counsel is okay with it and willing to stipulate to it,” so that the issue could be “held in abeyance, and [we] see how the minor does in whatever treatment or services he receives, and then we can re-address that as he gets closer to his 18th birthday.” Ryan’s counsel agreed, stating he had “already discussed [this] with [Ryan] as a possibility,” and Ryan understood “that if he does not cooperate 100 percent in whatever treatment he requires that he’s looking at [registering as a sex offender until he is twenty-five].” Consistent with the transcript, the minute entry from the disposition hearing states the issue of registration would be deferred, “pending an evaluation of the minor’s performance on probation.”

¶8 The state subsequently filed a petition to revoke probation and Ryan admitted at a review hearing that he had violated the terms of his probation. After Ryan made these admissions, the probation officer pointed out that the issue of sex-offender registration was still outstanding, commenting that “[Ryan] has a sex offender addendum.” At the disposition hearing on August 9, 2010, the juvenile court

acknowledged it had reviewed the psychosexual evaluation report and the prosecutor again raised the issue of registration. He stated that if the court felt it could retain jurisdiction of the issue, he would not be opposed to “coming back at some point down the road and trying to make a determination as to how [Ryan] did—if he does go to ADJC . . . how he did . . . and let the court make a decision regarding registration at that point as opposed to today.”

¶9 Defense counsel then informed the juvenile court that Ryan wanted to be committed to ADJC and agreed the court could retain jurisdiction of the registration issue. The court told Ryan it would decide the registration issue at a later date, committing Ryan to ADJC and setting a hearing for May 2011. The court admonished Ryan as follows:

[A] lot of it's going to depend on how you engage in services up there and what the reports are from the doctors, okay? So I will look at that, I will listen to the arguments of the attorneys, and we'll make a decision at that time. This gives you the opportunity maybe not to have to register, depending on how you do.

Again, Ryan never objected when the court made clear it would consider his future conduct, favorable or unfavorable, in deciding whether to require him to register.

¶10 Thus, based on the record before us, Ryan was well aware that his conduct while at ADJC would be an important factor in the juvenile court's decision and he did not object. He had ample notice of what would be considered and therefore lacks standing to challenge the constitutionality of the statute on the ground that it is vague. Ryan has thus waived any due process claim relating to the procedure followed in this case.

¶11 Similarly, Ryan did not object at the May 2011 hearing to the admission of evidence about his behavior while in ADJC, or to the juvenile court’s consideration of that evidence. The psychologist who specialized in psychosexual matters involving teenagers testified about his evaluation of Ryan, stating the purpose was to provide the court with information needed to determine whether Ryan is a danger to the community. He explained that psychosexual evaluations typically are conducted after a juvenile has received treatment and shortly before the juvenile’s eighteenth birthday to assist the court in determining whether the juvenile should be required to register as a sex offender. He stated he usually considers the juvenile’s conduct while at ADJC and did so with respect to Ryan. He described disturbing behavior exhibited by Ryan that he viewed as relevant to an assessment of whether Ryan would pose a danger to the community. In addition to citing Ryan’s aggressive and threatening behavior to other juveniles, the psychologist—reading from an ADJC incident report prepared by an ADJC staff member—testified Ryan had threatened the staff member, saying “he will quote find out where I live and rape my wife and my children end quote. He continued to say he was going to stick it in . . . my wife end quote.” Referring to a unit supervisor at ADJC who was involved in the process of evaluating him, Ryan had commented to another juvenile that if he were required to register, he would “punch her in the face.” Although during closing argument defense counsel noted he was not certain what the standard was under the statute, he did not object, much less raise the issues he now raises.

¶12 We also reject Ryan’s argument that his double jeopardy rights were violated. Again, Ryan never objected when the decision about registration was deferred and would be based on future conduct. Additionally, registration is not, as we previously stated, punitive in nature, rather it is a regulatory provision that is designed to protect the

public. *Maricopa Cnty. No. JV-132744*, 188 Ariz. at 183, 933 P.2d at 1251. Ryan was neither punished twice for the same offense, nor was he punished for new conduct after the disposition in 2010. *See State v. Henry*, 224 Ariz. 164, ¶ 27, 228 P.3d 900, 908 (App. 2010).

¶13 For the reasons stated, we affirm the juvenile court's order requiring Ryan to register as a sex offender pursuant to § 13-3821(D).

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge